



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

K

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,972	03/19/2001	Anthony J. DeGregoria	25207/9013	2776

23510 7590 09/11/2003

MICHAEL BEST & FRIEDRICH, LLP
ONE SOUTH PINCKNEY STREET
P O BOX 1806
MADISON, WI 53701

EXAMINER

ATKINSON, CHRISTOPHER MARK

ART UNIT PAPER NUMBER

3743

DATE MAILED: 09/11/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,972

Applicant(s)

Dr. Gregoria et al.

Examiner

Atkinson

Art Unit

3743



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/19/01
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-23 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 8-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No.'s 6,257,317 and 6,289,974 in view of Tanaka. The U.S. Patent No.'s 6,257,317 and 6,289,974 fail to teach the valve rotating 180 degrees.

The patent of Tanaka discloses a valve rotating from 90 to 150 degrees for the purpose of selectively ventilating and exchanging heat between inside and outside air. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the devices of U.S. Patent No.'s 6,257,317 and 6,289,974 the valve rotating from 90 to 150 degrees for the purpose of selectively ventilating and exchanging heat between inside and outside air as disclosed in Tanaka.

Claims 14-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. 6,257,317 in view of Macintyre et al. The U.S. Patent No. 6,257,317 fails to teach the manifold containing the stationary exchanger.

The patent of Macintyre et al. discloses that it is known to have a manifold containing stationary exchangers for the purpose of compactly and selectively ventilating and heat exchanger

09/8/12, 972

3

indoor and outside air. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the device of U.S. Patent No. 6,257,317 the manifold containing stationary exchangers for the purpose of compactly and selectively ventilating and heat exchanger indoor and outside air as disclosed in Macintyre et al.

Claims 21-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. 6,289,974 in view of Macintyre et al. The U.S. Patent No. 6,289,974 fails to teach a controlling means.

The patent of Macintyre et al. discloses that it is known to have a controlling means for the purpose of selectively ventilating and heat exchanger indoor and outside air. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the device of U.S. Patent No. 6,289,974 the manifold containing stationary exchangers for the purpose of selectively ventilating and heat exchanger indoor and outside air as disclosed in Macintyre et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Atkinson whose telephone number is (703) 308-2603.



C.A.

September 8, 2003

CHRISTOPHER ATKINSON
PRIMARY EXAMINER